UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
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In re:

BROOKLYN EVENTS LLC,
d/b/a VERBOTEN,
Debtor.

Chapter 11

Case No. 16-41371 (CEC)
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ORDER (I) APPROVING THE LEASE PURCHASE AGREEMENT AMONG DEBTOR AND 54N11BK, LLC, (II) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES, (III) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF UNEXPIRED LEASE IN CONNECTION THEREWITH AND (IV) GRANTING RELATED RELIEF

Upon the motion, dated May 20, 2016 (Docket No. 31) (the "Sale Motion")[1], filed by the above-captioned debtor and debtor in possession (the "Debtor") seeking, among other things, entry of an order, pursuant to sections 105, 363 and 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rules 6004-1 and 6006-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Eastern District of New York (the "Local Bankruptcy Rules"), authorizing and approving the sale of the Purchased Assets and the assumption and assignment of the Debtor's interest in a written lease dated February 15, 2012 between Grandfield Realty Corp., as landlord (the "Landlord") and Debtor, as tenant (the "Lease") at premises located at 60 North 11th Street, Brooklyn, New York (the "Premises"); and the Court having taken into consideration this Court's prior order, dated June 6, 2016 (Docket No. 52) (the "Bid Procedures Order"), approving procedures for the sale or disposition of the Lease and certain personal property (the "Personal Property") (the Personal Property and the Lease collectively, the "Purchased Assets"); and 54N11BK, LLC (the "Buyer") having submitted a bid for the Purchased Assets, which was the successful bid for the Purchased Assets at an auction conducted on July 18, 2016 (the "Auction"); and the Court having conducted a hearing on the Sale Motion (the "Sale Hearing") on July 20, 2016, at which time all interested parties were offered an opportunity to be heard with respect to the Sale Motion as it applies to the foregoing transaction; and the Court having reviewed and considered (i) the Sale Motion and the exhibits thereto; (ii) the revised Lease Purchase Agreement, dated as of July 18, 2016 (the "Lease Purchase Agreement"), a copy of which is attached hereto as **Exhibit A**, by and between the Debtor and Buyer, whereby the Debtor has agreed, among other things, to sell the Purchased Assets to Buyer, including the Lease of the Debtor that will be assumed and assigned to Buyer, on the terms and conditions set forth in the Lease Purchase Agreement (the "Sale Transaction"); (iii) the Notice of Occurrence of (I) Auction Sale for Premises Located at 60 N. 11th Street, Brooklyn, New York and Substantially All of the Personal Property; and (II) Debtor's Selection of 54N11BK, LLC as Highest and Best Bid (Docket No. 71); (iv) Report of Sale of Debtor's Leasehold, Interest and Related Personal Property (Docket No. 72); (v) the Debtor's Reply to the Landlord's Objection to Proposed Cure Amount (Docket No. 73); and (vi) the arguments of counsel made, and the evidence proffered and adduced, at the Sale Hearing; and it appearing that due notice of the Sale Motion having been provided; and all objections to the Sale Motion having been withdrawn, resolved or overruled as provided in this Order; and it appearing that the relief requested in the Sale Motion and granted herein is in the best interests of the Debtor, its estate and creditors and all parties in interest in this chapter 11 case; and upon the record of the Sale Hearing and this chapter 11 case; and after due deliberation thereon; and good cause appearing therefor, it is hereby

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[1] Capitalized terms used herein but not otherwise defined have the meanings given to them in the Lease Purchase Agreement (as defined below) or, if not defined in the Lease Purchase Agreement, the meanings given to them in the Sale Motion.

FOUND AND DETERMINED THAT:

A. **Fed. R. Bankr. P. 7052.** The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. **Jurisdiction and Venue.** This Court has jurisdiction to decide the Sale Motion and over the Sale Transaction pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b). This matter is a core proceeding pursuant to 28 U. S.C. § 157(b)(2). Venue of this chapter 11 case and the Sale Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

C. **Statutory and Rule Predicates.** The statutory and other legal predicates for the relief sought in the Sale Motion are sections 105(a), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006, Local Bankruptcy Rules 6004-1 and 6006-1, and the Sale Guidelines for the conduct of asset sales, Approved by Administrative Order Number 383 in the United States Bankruptcy Court for the Eastern District of New York.

D. **Opportunity to Object.** A fair and reasonable opportunity to object to and to be heard with respect to the Sale Motion, the Sale Transaction and the relief requested in the Sale Motion has been given, as required by the Bankruptcy Code and the Bankruptcy Rules, to all Persons entitled to notice pursuant to the Bid Procedures Order, including, but not limited to, the following: (i) all non-Debtor parties to the Lease, (ii) all parties who have requested notice in this chapter 11 case pursuant to Bankruptcy Rule 2002, (iii) all applicable federal, state, and local taxing and regulatory authorities, and (iv) all of the Debtor's known creditors.

E. **Final Order.** This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a).

F. **Sound Business Purpose.** The Debtor has demonstrated good, sufficient, and sound business purposes and justifications for approval of the Sale Motion, the Lease Purchase Agreement, and the Sale Transaction and in entering into the Lease Purchase Agreement and related Bill of Sale and Assignment and Assumption Agreement (the "Related Agreements"). The Debtor's entry into and performance under the Lease Purchase Agreement and Related Agreements (i) constitute a sound and reasonable exercise of the Debtor's business judgment, (ii) provide value to and are beneficial to the Debtor's estate, and is in the best interests of the Debtor and its stakeholders, and (iii) are reasonable and appropriate under the circumstances. Business justifications for the Sale Transaction include, but are not limited to, the following: (i) the Lease Purchase Agreement constitutes the highest and best offer received for the Purchased Assets; (ii) the Lease Purchase Agreement presents the best opportunity to maximize the value of the Purchased Assets and avoid decline and devaluation of the Purchased Assets; (iii) unless the Sale Transaction and all of the other transactions contemplated by the Lease Purchase Agreement are concluded expeditiously, as provided for pursuant to the Lease Purchase Agreement, recoveries to creditors may be materially diminished; and (iv) the value of the Debtor's estate will be maximized through the sale of the Purchased Assets pursuant to the Lease Purchase Agreement.

G. **Compliance with Bid Procedures Order.** The Debtor and Buyer complied with the Bid Procedures Order and the Bid Procedures in all respects. Buyer was the successful bidder for the Purchased Assets in accordance with the Bid Procedures.

H. **Highest and Best Value.** (i) The Debtor and their advisors, including MYC & Associates, Inc., engaged in a robust and extensive marketing and sale process during the postpetition sale process pursuant to the Bid Procedures Order, (ii) the Debtor conducted a fair and open sale process, (iii) the sale process, the Bid Procedures and the Auction were noncollusive, duly noticed and provided a full, fair and reasonable opportunity for any entity to make an offer to purchase the Purchased Assets, and (iv) the process conducted by the Debtor pursuant to the Bid Procedures Order and the Bid Procedures obtained the highest and best value for the Purchased Assets for the Debtor and its estate, and any other transaction would not have yielded as favorable an economic result.

I. **Fair Consideration.** The consideration to be paid by Buyer under the Lease Purchase Agreement constitutes fair and reasonable consideration for the Purchased Assets.

J. **No Successor or Other Derivative Liability.** Buyer is not, and will not be, a mere continuation, and is not holding itself out as a mere continuation, of the Debtor or its estate and there is no continuity between Buyer and the Debtor. The Sale Transaction does not amount to a consolidation, merger or *de facto* merger of Buyer and the Debtor.

K. **Good Faith.** The Lease Purchase Agreement and each of the transactions contemplated therein were negotiated, proposed and entered into by the Debtor and Buyer in good faith, without collusion and from arm's-length bargaining positions. Buyer is a "good faith purchaser" within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to all the protections afforded thereby. Neither the Debtor nor Buyer have engaged in any conduct that would cause or permit the Lease Purchase Agreement to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code. Buyer is not an "insider" of the Debtor, as that term is defined in section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, managers, members or controlling stockholders exists between Buyer and the Debtor.

L. **Notice.** As evidenced by the affidavits of service filed with the Court: (i) proper, timely, adequate and sufficient notice of the Sale Motion, the bidding process (including the deadline for submitting bids and the Auction), the Sale Hearing and the Sale Transaction was provided by the Debtor; (ii) such notice was good, sufficient and appropriate under the particular circumstances and complied with the Bid Procedures Order; and (iii) no other or further notice of the Sale Motion, the Sale Transaction, the Bid Procedures or the Sale Hearing is required.

M. **Cure Notice.** As evidenced by the certificates of service filed with the Court, and in accordance with the provisions of the Bid Procedures Order, the Debtor has served, prior to the Sale Hearing, notice (the "Cure Notice") of the Debtor's intent to assume and assign the Lease and of the related proposed cure amount (the "Cure Amount") upon the Landlord to the Lease. The service of the Cure Notice was good, sufficient and appropriate under the circumstances and no further notice need be given with respect to the Cure Amounts for the assumption and assignment of the Lease. All non-debtor parties to the Lease have had a reasonable opportunity to object both to the Cure Amounts listed on the Cure Notice and to the assumption and assignment of the Lease to Buyer.

N. **Satisfaction of Section 363(f) Standards.** The Debtor may sell the Purchased Assets free and clear of all liens, claims (including those that constitute a "claim" as defined in section 101(5) of the Bankruptcy Code), rights, liabilities, encumbrances and other interests of any kind or nature whatsoever against the Debtor or the Purchased Assets, including, without limitation, any debts arising under or out of, in connection with, or in any way relating to, any acts or omissions, obligations, demands, guaranties, rights, contractual commitments, restrictions, product liability claims, environmental liabilities, employee pension or benefit plan claims, multiemployer benefit plan claims, retiree healthcare or life insurance claims or claims for taxes of or against the Debtor, and any derivative, vicarious, transferee or successor liability claims, rights or causes of action (whether in law or in equity, under any law, statute, rule or regulation of the United States, any state, territory, or possession thereof or the District of Columbia), whether arising prior to or subsequent to the commencement of this chapter 11 case, whether known or unknown, and whether imposed by agreement, understanding, law, equity or otherwise arising under or out of, in connection with, or in any way related to the Debtor, the Debtor's interests in the Purchased Assets, the operation of the Debtor's business before the Closing, or the transfer of the Debtor's interests in the Purchased Assets to Buyer (collectively, excluding any liabilities expressly assumed under the Lease Purchase Agreement, the "Claims"), because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code have been satisfied. The Debtor has properly served all holders of Claims with the Sale Motion in accordance with the Federal Rules of Bankruptcy Procedure. Those holders of Claims who did not object (or initially objected but withdrew such objection) to the Sale Transaction or the Sale Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Claims who did object (unless such creditors withdrew such objection) that have an interest in the Purchased Assets fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are therefore adequately protected by having their Claims that constitute interests in the Purchased Assets, if any, attach solely to the proceeds of the Sale Transaction ultimately attributable to the property in which they have an interest, in the same order of priority and with the same validity, force and effect that such holders had prior to the Sale Transaction, subject to any defenses of the Debtor. All Persons having Claims of any kind or nature whatsoever against the Debtor or the Purchased Assets shall be forever barred, estopped and permanently enjoined from pursuing or asserting such Claims against Buyer or any of its assets, property, affiliates, successors, assigns, or the Purchased Assets.

O. Buyer would not have entered into the Lease Purchase Agreement and would not consummate the transactions contemplated thereby, thus adversely affecting the Debtor and its estate and its creditors, if the sale of the Purchased Assets was not free and clear of all Claims, or if Buyer would, or in the future could, be liable for any such Claims.

P. The total consideration to be provided under the Lease Purchase Agreement reflects Buyer's reliance on this Order to provide it, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, with title to and possession of the Purchased Assets free and clear of all Claims (including, without limitation, any potential derivative, vicarious, transferee or successor liability claims).

Q. **Assumption and Assignment of Lease.** The assumption and assignment of the Lease is integral to the Lease Purchase Agreement, is in the best interests of the Debtor and its estate, and represents the reasonable exercise of the Debtor's sound business judgment. Specifically, the assumption and assignment of the Lease (i) is necessary to sell the Purchased Assets to Buyer, (ii) limit the losses suffered by counterparties to the Lease, and (iii) maximize the recoveries to other creditors of the Debtor by limiting the amount of claims against the Debtor's estate by avoiding the rejection of the Lease.

R. With respect to the Lease, the Debtor had met all requirements of section 365(b) of the Bankruptcy Code. Further, Buyer has provided adequate assurance of future performance under the Lease in satisfaction of sections 365(b) and 365(f) of the Bankruptcy Code to the extent that any such assurance is required and not waived by the counterparties to such Lease. Accordingly, the Lease may be assumed by the Debtor and assigned to Buyer as provided for in the Lease Purchase Agreement.

S. **Validity of the Transfer.** As of the Closing, the transfer of the Purchased Assets to Buyer will be a legal, valid and effective transfer of the Purchased Assets, and will vest Buyer with all right, title and interest of the Debtor in and to the Purchased Assets, free and clear of all Claims.

T. The Purchased Assets constitute property of the Debtor's estate and good title is vested in the Debtor's estate within the meaning of section 541(a) of the Bankruptcy Code. The Debtor is the sole and rightful owner of the Purchased Assets, and no other Person has any ownership right, title, or interests therein.

U. The Lease Purchase Agreement is a valid and binding contract between the Debtor and Buyer and shall be enforceable pursuant to its terms. The Lease Purchase Agreement and the Sale Transaction itself, and the consummation thereof shall be specifically enforceable against and binding upon (without posting any bond) the Debtor, any chapter 7 or chapter 11 trustee appointed in this chapter 11 case, and shall not be subject to rejection or avoidance by the foregoing parties or any other Person.

V. **Waiver of Bankruptcy Rules 6004(h) and 6006(d).** The sale of the Purchased Assets must be approved and consummated promptly in order to preserve the value of the Purchased Assets. Therefore, time is of the essence in consummating the Sale Transaction, and the Debtor and Buyer intend to close the Sale Transaction as soon as reasonably practicable. The Debtor has demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the immediate approval and consummation of the Sale Transaction as contemplated by the Lease Purchase Agreement. Accordingly, there is sufficient cause to lift the stay contemplated by Bankruptcy Rules 6004(h) and 6006(d) with regards to the transactions contemplated by this Order.

W. **Legal and Factual Bases.** The legal and factual bases set forth in the Sale Motion and at the Sale Hearing establish just cause for the relief granted herein.

NOW THEREFORE, IT IS ORDERED THAT:

1. **Motion is Granted.** The Sale Motion and the relief requested therein is granted and approved as set forth herein.

2. **Objections Overruled.** All objections, if any, to the Sale Motion or the relief requested therein that have not been withdrawn, waived or settled as announced to the Court at the Sale Hearing or by stipulation filed with the Court, and all reservations of rights included therein, are hereby overruled on the merits.

3. **Notice.** Notice of the Sale Hearing was fair and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006.

4. **Fair Purchase Price.** The consideration provided by Buyer under the Lease Purchase Agreement is fair and reasonable.

5. **Approval of the Lease Purchase Agreement.** The Lease Purchase Agreement, all transactions contemplated therein and all of the terms and conditions thereof are hereby approved. The failure specifically to include any particular provision of the Lease Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Lease Purchase Agreement be authorized and approved in its entirety.

6. **Consummation of Sale Transaction.** Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, the Debtor, as well as it officers, employees and agents, are authorized to execute, deliver and perform their obligations under and comply with the terms of the Lease Purchase Agreement and to consummate the Sale Transaction, pursuant to and in accordance with the terms and conditions of the Lease Purchase Agreement and this Order.

7. The Debtor and its officers and agents, are authorized to execute and deliver, and authorized to perform under, consummate and implement all additional instruments and documents that may be reasonably necessary or desirable to implement the Lease Purchase Agreement and to take all further actions as may be (a) reasonably requested by Buyer for the

purpose of assigning, transferring, granting, conveying and conferring to Buyer, or reducing to possession, the Purchased Assets or (b) necessary or appropriate to the performance of the obligations contemplated by the Lease Purchase Agreement, all without further order of the Court.

8. At the Closing, after taking into account the $120,000 good faith deposit already held by Tarter Krinsky & Drogin LLP ("TKD"), the Buyer shall wire $1,055,000, representing the balance of the Purchase Price, into TKD's IOLA escrow account (the "Escrow"), provided further that such sale proceeds shall not be distributed by TKD, as set forth on the record of the Sale Hearing, other than by an appropriate Court order.

9. All Persons that are currently in possession of some or all of the Purchased Assets are hereby directed to surrender possession of such Purchased Assets to Buyer as of the Closing.

10. Each and every any federal, state, local, or foreign government or governmental or regulatory authority, agency, board, bureau, commission, court, department, or other governmental entity is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Lease Purchase Agreement.

11. **Transfer of Assets Free and Clear.** Pursuant to sections 105(a), 363(b), 363(f) and 365 of the Bankruptcy Code, the Debtor is authorized to transfer the Purchased Assets in accordance with the terms of the Lease Purchase Agreement. The Purchased Assets shall be transferred to Buyer, and upon the Closing, such transfer shall: (a) be valid, legal, binding and effective; (b) vest Buyer with all right, title and interest of the Debtor in the Purchased Assets; and (c) be free and clear of all Claims in accordance with section 363(f) of the Bankruptcy Code, with all Claims that represent interests in property to attach to the net proceeds of the Sale Transaction, in the same amount and order of their priority, with the same validity, force and

effect which they have against the Purchased Assets, and subject to any claims and defenses the Debtor may possess with respect thereto in each case immediately before the Closing.

11. Except as otherwise provided in the Lease Purchase Agreement, all Persons (and their respective successors and assigns) including, without limitation, all debt security holders, equity security holders, governmental, tax and regulatory authorities, employees, former employees, trade creditors and any other creditors holding Claims against the Debtor or the Purchased Assets, are hereby forever barred, estopped and permanently enjoined from asserting or pursuing such Claims against Buyer, its affiliates, successors or assigns, its property or the Purchased Assets, including, without limitation, taking any of the following actions with respect to a Claim (other than an Assumed Liability): (a) commencing or continuing in any manner any action or other proceeding against Buyer, its affiliates, successors or assigns, assets or properties; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree, or order against Buyer, its affiliates, successors or assigns, assets, or properties; (c) creating, perfecting, or enforcing any Claims against Buyer, its successors or assigns, assets or properties; (d) asserting a Claim as a setoff, right of subrogation or recoupment of any kind against any obligation due Buyer or its successors or assigns; or (e) commencing or continuing any action in any manner or place that does not comply, or is inconsistent, with the provisions of this Order or the agreements or actions contemplated or taken in respect thereof. No such Persons shall assert or pursue against Buyer or its affiliates, successors or assigns any such Claim.

12. This Order (a) shall be effective as a determination that, as of the Closing, all Claims, have been unconditionally released, discharged and terminated as to Buyer and the Purchased Assets, and that the conveyances and transfers described herein have been effected, and (b) is and shall be binding upon and govern the acts of all Persons, including all filing agents, filing officers, title agents, title companies, recorders of mortgages,

recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other Persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Lease; and each of the foregoing Persons is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Lease Purchase Agreement.

13. Following the Closing of the Sale Transaction, no holder of any Claim shall interfere with Buyer's title to or use and enjoyment of the Purchased Assets based on or related to any such Claim or based on any actions the Debtor may take in this chapter 11 case.

14. Except as expressly set forth in the Lease Purchase Agreement, Buyer and its successors and assigns shall have no liability for any Claim, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, whether derivatively, vicariously, as a transferee or successor or otherwise, of any kind, nature or character whatsoever, including Claims arising under, without limitation: (a) any employment or labor agreements or the termination thereof; (b) any pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of or related to the Debtor or any of the Debtor's affiliates or predecessors or any current or former employees of any of the foregoing, or the termination of any of the foregoing; (c) the Debtor's business operations or the cessation thereof; (d) any litigation involving the Debtor; and (e) any employee, workers' compensation, occupational disease or unemployment or temporary disability related law, including, without limitation, claims that might otherwise arise under or pursuant to (i) the Employee Retirement Income Security Act of 1974, as amended, (ii)

the Fair Labor Standards Act, (iii) Title VII of the Civil Rights Act of 1964, (iv) the Federal Rehabilitation Act of 1973, (v) the National Labor Relations Act, (vi) the Worker Adjustment and Retraining Notification Act of 1988, (vii) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (viii) the Americans with Disabilities Act of 1990, (ix) the Consolidated Omnibus Budget Reconciliation Act of 1985, (x) the Multiemployer Pension Plan Amendments Act of 1980,(xi) state and local discrimination laws, (xii) state and local unemployment compensation laws or any other similar state and local laws, (xiii) state workers' compensation laws or (xiv) any other state, local or federal employee benefit laws, regulations or rules or other state, local or federal laws, regulations or rules relating to, wages, benefits, employment or termination of employment with the Debtor or any predecessors; (xv) any antitrust laws; (xvi) any product liability or similar laws, whether state or federal or otherwise; (xvii) any environmental laws, rules, or regulations, including, without limitation, under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601, et seq., or similar state statutes; (xviii) any bulk sales or similar laws; (xix) any federal, state or local tax statutes, regulations or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; and (xx) any common law doctrine of *de facto* merger or successor or transferee liability, successor-in-interest liability theory or any other theory of or related to successor liability.

15. If any Person that has filed financing statements, mortgages, mechanic's liens, *lis pendens* or other documents or agreements evidencing Claims against or in the Debtor or the Purchased Assets shall not have delivered to the Debtor prior to the Closing of the Sale Transaction, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all interests which the Person has with respect

to the Debtor or the Purchased Assets or otherwise, then with regard to the Purchased Assets that are purchased by Buyer pursuant to the Lease Purchase Agreement and this Order (a) the Debtor is hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the Person with respect to the Purchased Assets and (b) Buyer is hereby authorized to file, register or otherwise record a certified copy of this Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Claims against the Purchased Assets. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state or local government agency, department or office.

16. **No Successor or Other Derivative Liability.** By virtue of the Sale Transaction, Buyer shall not be deemed to: (a) be a legal successor, or otherwise be deemed a successor to the Debtor; (b) have, *de facto* or otherwise, merged with or into the Debtor; or (c) be a mere continuation or substantial continuation of the Debtor or the enterprise or operations of the Debtor.

17. **Assumption and Assignment of Lease.** The Debtor is hereby authorized in accordance with sections 105(a) and 365 of the Bankruptcy Code to assume and assign the Lease to Buyer free and clear of all Claims, and to execute and deliver to Buyer such documents or other instruments as may be necessary to assign and transfer the Lease to Buyer as provided in the Lease Purchase Agreement. Upon the Closing, Buyer shall be fully and irrevocably vested with all right, title and interest of the Debtor under the Lease and, pursuant to section 365(k) of the Bankruptcy Code, the Debtor shall be relieved from any further liability with respect to the Lease. Buyer acknowledges and agrees that from and after the Closing, subject to and in accordance with the Lease Purchase Agreement, it shall comply with the terms of the assumed and assigned

Lease in its entirety, including any indemnification obligations expressly contained in such Lease that could arise as a result of events or omissions that occur from and after the Closing, unless any such provisions are not enforceable pursuant to the terms of this Sale Order.

18. As set forth on the record of the Sale Hearing, on account of the Landlord's pre-petition and post-petition claims under the Lease, the Debtor and the Landlord have agreed to a cure amount of $187,500 (the "Cure Amounts"). Within two business days of the Closing, TKD shall distribute from the Escrow to Grandfield Realty Corp. (the "Landlord") the sum $85,500, representing the balance of the agreed upon Cure Amounts, after Landlord's retention of a security deposit of $102,000. Payment of the Cure Amounts shall be in full satisfaction and cure of any and all defaults under the Lease, whether monetary or non-monetary. Each non-debtor party to the Lease is forever barred, estopped and permanently enjoined from asserting against the Debtor or Buyer, their successors or assigns or the property of any of them, any default existing as of the date of the Sale Hearing if such default was not raised or asserted prior to or at the Sale Hearing. Further, payment of the Cure Amounts shall result in a release of any and claims by and between the Landlord, on the one hand, and the Debtor and its principals, on account of their "good guy" guarantees, on the other hand.

19. In the event the Successful Bidder does not close by July 29, 2016, the Debtor's time to assume and assign the Lease under section 365(d)(4) shall be extended through August 30, 2016 without the need for any additional motion or notice.

20. **Ipso Facto Clauses Ineffective.** The Lease shall be transferred to, and remain in full force and effect for the benefit of, Buyer in accordance with its respective terms, including all obligations of Buyer as the assignee of the Lease, notwithstanding any provision in any such Lease (including, without limitation, those of the type described in sections 365(e)(1) and (f) of the Bankruptcy Code) that prohibits, restricts or conditions such assignment or transfer. There

shall be no rent accelerations, escalations, assignment fees, increases or any other fees charged to Buyer or the Debtor as a result of the assumption or assignment of the Lease.

21. Upon the Debtor's assignment of the Lease to Buyer under the provisions of this Order, no default shall exist under the Lease, and no counterparty to the Lease shall be permitted to declare a default by the Debtor or Buyer otherwise take action against Buyer as a result of the Debtor's financial condition, bankruptcy or failure to perform any of its obligations under the Lease. Any provision in the Lease that prohibits or conditions the assignment or sublease of the Lease (including without limitation, the granting of a lien therein) or allows the counterparty thereto to terminate, recapture, impose any penalty, condition on renewal or extension, or modify any term or condition upon such assignment or sublease, constitutes an unenforceable anti-assignment provision that is void and of no force and effect. The failure of the Debtor or Buyer to enforce at any time one or more terms or conditions of the Lease shall not be a waiver of such terms or conditions, or of the Debtor's and Buyer's rights to enforce every term and condition of the Lease.

22. **SWL Enterprises, LLC Treatment: Abandonment of Sound Equipment.** The objection filed by SWL Enterprises, LLC ("SWL") (Docket No. 70) on July 18, 2016 is deemed withdrawn and, in exchange for such withdrawal, SWL shall receive from the Escrow, without offset or deduction, the sum of $175,000, representing the allocated value of the Personal Property that is being sold to Buyer. Further, the Debtor is authorized pursuant to sections 362 and 554 of the Bankruptcy Code to grant SWL relief from the automatic stay, to the extent necessary, and abandon certain sound equipment annexed hereto as Exhibit B to SWL to allow SWL to take possession of the sound equipment (which it will endeavor to do by August 5, 2016 with any additional time to be negotiated between SWL and the Buyer once the Buyer has taken

possession of the premises). In connection with SWL's disposition of the sound equipment, Debtor has agreed to execute all documentation necessary to convey such equipment to the eventual buyer. Upon a disposition of the sound equipment, SWL and Debtor will engage in good faith discussions regarding the allowed amount of SWL's unsecured deficiency claim and SWL's support for a plan of liquidation, if any, to be filed in this case.

23. **Abandonment of Kitchen Equipment.** The Debtor is authorized pursuant to sections 362 and 554 of the Bankruptcy Code to grant Wasco Capital Services LLC ("Wasco") relief from the automatic stay, to the extent necessary, and to abandon kitchen/bar equipment annexed as **Exhibit C**, leased by the Debtor from Wasco and excluded from the sale, to Wasco. Unless different arrangements for the kitchen/bar equipment are made between Wasco and Buyer, the kitchen/bar equipment must be removed by July 31, 2016.

24. **Backup Bidder.** Snap Music Group LLC ("Snap Music") and the Debtor reserve their rights with respect to whether Snap Music shall be deemed the Backup Bidder (as defined in the Bid Procedures Order) in the event that Snap Music is not able to purchase the sound equipment.

25. **Statutory Mootness.** The transactions contemplated by the Lease Purchase Agreement are undertaken by Buyer in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein of the Sale Transaction shall neither affect the validity of the Sale Transaction nor the transfer of the Purchased Assets to Buyer, free and clear of Claims, unless such authorization is duly stayed before the Closing pending such appeal.

26. **No Avoidance of Lease Purchase Agreement.** Neither the Debtor nor Buyer has engaged in any conduct that would cause or permit the Lease Purchase Agreement to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code.

27. **Waiver of Bankruptcy Rules 6004(h) and 6006(d).** Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d) or any applicable provisions of the Local Rules, this Order shall not be stayed after the entry hereof, but shall be effective and enforceable immediately upon entry, and the fourteen (14) day stay provided in Bankruptcy Rules 6004(h) and 6006(d) is hereby expressly waived and shall not apply. Any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay within the time prescribed by law and prior to the Closing, or risk its appeal will be foreclosed as moot.

28. **Binding Effect of this Order.** The terms and provisions of the Lease Purchase Agreement and this Order shall be binding in all respects upon, or shall inure to the benefit of, the Debtor, its estate and creditors, Buyer, and its respective affiliates, successors and assigns, and any affected third parties, including all Persons asserting Claims, notwithstanding any subsequent appointment of any trustee, examiner or receiver under any chapter of the Bankruptcy Code or any other law, and all such provisions and terms shall likewise be binding on such trustee, examiner or receiver and shall not be subject to rejection or avoidance by the Debtor, its estate, its creditors or any trustee, examiner or receiver.

29. **Conflicts; Precedence.** In the event that there is a direct conflict between the terms of this Order and the terms of (a) the Lease Purchase Agreement, or (b) any other order of this Court, the terms of this Order shall control. Nothing contained in any chapter 11 plan hereinafter confirmed in this chapter 11 case, or any order confirming such plan, shall conflict with or derogate from the provisions of the Lease Purchase Agreement or the terms of this Order.

30. **Modification of Lease Purchase Agreement.** The Lease Purchase Agreement, and any related agreements, documents or other instruments, may be modified, amended or supplemented by the parties thereto, in a writing signed by each party, and in accordance with the terms thereof, without further order of the Court; provided that any such modification, amendment or supplement does not materially change the terms of the Lease Purchase Agreement or any related agreements, documents or other instruments.

31. **Bulk Sales.** No bulk sales law, or similar law of any state or other jurisdiction shall apply in any way to the transactions contemplated by the Lease Purchase Agreement, the Sale Motion or this Order.

32. **Retention of Jurisdiction.** This Court shall retain exclusive jurisdiction to, among other things, interpret, enforce and implement the terms and provisions of this Order and the Lease Purchase Agreement, all amendments thereto, any waivers and consents thereunder (and of each of the agreements executed in connection therewith), to adjudicate disputes related to this Order or the Lease Purchase Agreement (and such other related agreements, documents or other instruments) and to enforce the injunctions set forth herein.

Dated: Brooklyn, New York
July 27, 2016

United States Bankruptcy Court Eastern District of New York

Carla E. Craig

Carla E. Craig
United States Bankruptcy Judge